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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-93

JAMES GEORGE STAFOS,
Bankrupt-Petitioner,

vs.

LAURENCE M. JARVIS, Trustee in Bankruptcy,
Respondent.

MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND AMENDMENT TENDERED FOR FILING

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MOTION FOR LEAVE TO AMEND PETITION FOR CERTIORARI

Comes now your petitioner, JAMES GEORGE STAFOS, and moves the court for an order permitting him to amend his petition for certiorari to the United States Court of Appeals for the Tenth Circuit by adding the amendment set out herein annexed to this motion. That leave to make such amendment is requested for the following reasons:

That subsequent to the filing of the petition for certiorari herein, the District Court of Johnson County, Kan-

sas, September 7, 1973 (Johnson County joins Wyandotte County to the South and both counties are part of the metropolitan Kansas City area) in the case of *State of Kansas ex rel. Margaret W. Jordan, District Attorney for the Tenth Judicial District, Plaintiff* v. *The City of Overland Park, a Municipal Corporation and a First Class City in Johnson County, Kansas*, which decision holds that Chapter 98 of the Laws of Kansas 1967 which appears in the Supplement to Kansas Statutes Annotated as 12-519 to 12-526, both inclusive, and which is printed in the appendix to the amendment sought to be filed as Pages B1 to B5 therein, was unconstitutional. Chapter 98 of the Laws of Kansas 1967, held unconstitutional by the District Court of Johnson County, Kansas, in the Overland Park case is similar to Chapter 129 of the Laws of Kansas 1953 which appears in the Supplement to Kansas Statutes Annotated as 13-1602a as set forth in the appendix to the petition for certiorari at Pages A24 to A25.

Neither Chapter 98 of the Laws of Kansas 1967, involved in the Overland Park case, or Chapter 129 of the Laws of Kansas 1953, involved in *Stafos* v. *Jarvis* case (now before this Court on certiorari), provide for the giving of notice to landowners or residents of the area to be annexed to a city that their land is to be taken into the city, the right to be heard, or to protest the annexation in any way, nor does either of these laws give a landowner the right to appeal to the District Court of the county from a decision of the city fathers to take his land into the city.

Chapter 109 of the Laws of Kansas 1923 which appears in Kansas Statutes Annotated as 12-501, 12-502 and 12-502a could have been used for annexing land to the cities of Kansas City, Kansas and Overland Park if the governing bodies of the cities chose to do so, appears in the

appendix to the petition for certiorari at Pages A26 and A27.

The decision of the District Court of Johnson County, Kansas, of September 7, 1973, was appealed to the Supreme Court of Kansas by the City of Overland Park, September 11, 1973, where the validity of the statute involved, Chapter 98, Laws of 1967, will be passed on by the Court of last resort of the State.

That prior to the decision of the District Court of Johnson County, Kansas, there were no adjudicated cases passing on the constitutionality of Chapter 129 of the Laws of Kansas 1953 or Chapter 98 of the Laws of 1967, both of which laws, on their face, deprive a landowner without notice to be heard or protest in any way, of a legal remedy of any sort, and deprive him of his vested estate and rights in a homestead in excess of one acre of ground merely by the passage of a city ordinance of which the landowners have no prior notice.

The opinion of September 7, 1973 of the District Court of Johnson County, Kansas, consists of Pages 1 to 29 on 8½ by 14 legal sized paper so only the pertinent parts of the said memorandum decision, which was appealed to the Supreme Court of Kansas, September 11, 1973, are set out in the amendment tendered for filing herewith at Pages 6 to 7. The District Court of the United States for the District of Kansas, notwithstanding a request by plaintiff to apply the abstention doctrine, held Chapter 109 of the Laws of 1929 constitutional and that it did not deprive petitioner of his vested homestead rights under the Constitution of the United States, particularly the 14th Amendment thereto, whereas the decision of the District Court of Johnson County, Kansas, of September 7, 1973, which was appealed September 11, 1973, to the Supreme Court of Kansas holds a like and similar act, Chapter

98 of the Laws of Kansas 1967, as unconstitutional in violation of the 14th Amendment.

WHEREFORE, petitioner prays that he be permitted to file the tendered amendment to his Petition for Certiorari.

Respectfully submitted,

WASH H. BROWN
THOMAS E. JOYCE
Attorneys for Petitioner

AMENDMENT TO PETITION FOR CERTIORARI

Comes now Bankrupt-Petitioner, James George Stafos, by his attorneys of record and Amends his Petition for a Writ of Certiorari to the United States Court of Appeals, Tenth Circuit, as follows:

City Ordinance #45492 of The City of Kansas City, Kansas (Appendix to Petition, Page A21), was passed by the Board of City Commissioners, March 1st, 1966, without prior notice to any of the owners of land annexed, including your petitioners; the ordinance was published March 2nd, 1966. Among the lands annexed to the city was petitioner's homestead, a 13.2 acre truck farm, where petitioner and his wife and family resided, and farmed.

The Annexation Ordinance was enacted under the provisions of 13-1602a, Kansas Statutes Annotated, the statute is set out in the Appendix to Petition for Cert. at page A24, a reading thereof will disclose that the City can annex lands in the County in which it is located without notice to or consent of the landowners whose lands are to be annexed to the city; but in the case of lands in an adjoining county to that in which the city is located, consent of such landowners or their petition for annexation is required. In this connection petitioner relies on *Funtes* v. *Shevin,* 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, to sustain his contention that the reduction of his homestead from 13.2 acres to 1 acre, divested him of his vested homestead right without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Since the decision of the Court of Appeals, Tenth Circuit, was rendered April 30th, 1973 the District Court of Johnson County, Kansas on September 7th, 1973 de-

cided the case of *State of Kansas, ex rel. Margaret Jordan, District Attorney of the Tenth Judicial District* v. *The City of Overland Park, a Municipal Corporation, and a First Class City of Johnson County, Kansas,* the court therein holding that a similar annexation statute, Chapter 98 of the Laws of Kansas 1967, which appears in Kansas Statutes Annotated as 12-519 to 12-526, said statutes being set out in the Appendix to this Amendment at Pages B1 to B5, therein. The opinion of the District Court of Johnson County, Kansas states the court's *Conclusions of Law,* and *Judgment and Order,* as follows:

"CONCLUSIONS OF LAW

The general annexation statute, K.S.A. 1971 Supp. 12-519, *et seq.,* are unconstitutional as an unlawful delegation of legislative power, *Article 2, Section I, Kansas Constitution,* in that it lacks legislative standards or legislative policy.

2. The general annexation statute, K.S.A. 1971 Supp. 12-519, *et seq.,* is unconstitutional as it violates the "Due Process of Law" provision of the Kansas Constitution, the Bill of Rights, and the "Due Process and Equal Protection Clauses" of the 14 Amendment to the Constitution of the United States.

3. The general annexation statute, K.S.A. 1971 Supp. 12-519, *et seq.,* is unconstitutional in its use and application in the instant case.

4. The perimeter provisions of the annexation statute, K.S.A. 1971 Supp. 12-520(d), has been incorrectly interpreted and applied in the instant case, resulting in an unintended expansion of the power of the city to annex under this single provision.

5. The perimeter provision of the annexation statute, K.S.A. 1971 Supp. 12-520(d), is unconstitutionally vague and indefinite as to meaning.

6. The annexation Act, K.S.A. 1971 Supp. 12-519, *et seq.*, is contrary to the Home Rule Amendment and is unconstitutional."

"JUDGMENT AND ORDER

IT IS BY THE COURT, CONSIDERED, ORDERED, ADJUDGED AND DECREED, that the provisions of K.S.A. 1971 Supp. 12-519 through K.S.A. 1971 Supp. 12-526 are unconstitutional; that Ordinances Numbered A-643, A-644, A-645, A-646, A-647, A-649, A-650 and A-651 are null and void and of no force or effect whatsoever; that the Clerk of the Court be and she is hereby directed to enter the judgment and decree herein of record as of this date, and that it be effective as of this date, and that the costs of this action be taxed against the defendant, City of Overland Park, Kansas."

CONCLUSION

In view of the fact that a court of record of the State of Kansas has held Kansas Statutes Annotated 12-519 to 12-526 violated the Fourteenth Amendment to the Constitution of the United States, petitioner submits that the Opinion and Judgment of the Court of Appeals, Tenth Circuit, should be reversed, and ordered to enter a judgment holding that the whole of petitioner's 12.3 acre truck farm is exempt to him in his bankruptcy proceeding or in the alternative to order said court to reverse the judgment of the trial court directing it to sustain the motion of Bankrupt-Petitioner, which the trial court overruled, to apply the abstention doctrine so the questions can be litigated in the State Court, particularly in view of the fact that the

City of Overland Park on September 11th, 1973, appealed the decision of the District Court of Johnson County, Kansas to the Supreme Court of Kansas where the appeal is now pending and wherein a final decision construing the Kansas Law will be rendered

Respectfully submitted

WASH H. BROWN AND
THOMAS E. JOYCE
Attorneys for Petitioner

APPENDIX

12-519. Definitions. As used in this act: (*a*) "Tract" means a single unit of real property under one ownership, outside the corporate limits of a city, platted and/or unplatted, title to which is publicly or privately held by an owner as defined by subsection (*c*) herein.

(*b*) "Land" means a part of a tract or one or more tracts.

(*c*) "Owner" means the one who has record title to a tract. In the event two (2) or more have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ten (10) years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

(*d*) "Adjoins" means to lie upon or touch (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(3) [*e*] "Platted" means a tract mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

12-520. Conditions which permit annexation; ordinance; validity. The governing body of any city may by ordinance annex land to such city if any one or more of the following conditions exist:

(*a*) The land is platted, and some part of such land adjoins the city.

(*b*) The land is owned by or held in trust for the city or any agency thereof.

(*c*) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city.

(*d*) The land has a common perimeter with the city boundary line of more than fifty percent (50%).

(*e*) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of twenty (20) acres shall be annexed for this purpose.

(*f*) The tract is so situated that two-thirds (⅔) of any boundary line adjoins the city, except no tract in excess of twenty (20) acres shall be annexed under this condition.

(*g*) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

The governing body of any city may by one ordinance annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by such ordinance and which conform to any one or more of the foregoing conditions.

12-521. Petition to board of county commissioners; procedure; appeal. Whenever the governing body of any city deems it advisable to annex land which does not conform to any of the conditions specified in section 2 [12-520], the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located: *Provided*, No unplatted tract of over twenty (20) acres shall be annexed under this section if the owner thereof files a written protest thereto with both the clerks of such city and county at least five (5) clear days before the hearing date published as hereinafter provided in this section. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation.

Notice of the time and place of said hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published once a week for three (3) consecutive weeks in some newspaper of general circulation in the city. The board may for good cause shown continue said hearing beyond the time specified in the notice without further publication.

On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and if said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

The owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K.S.A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein.

12-522. Filing of annexation ordinance. Upon the passage and publication of any annexation ordinance authorized under this act, the city clerk shall file a certified copy of such ordinance with the county clerk, the register of deeds, and the county election commissioner, if any, of the county or counties in which such city is located. No fee shall be charged for such filings, and the register of deeds shall file, but not record, the certified copies of such ordinances filed with him.

12-523. Effective dates of annexation; exceptions. Annexation ordinances of cities shall take effect on publication as provided by law, except that any annexation ordinance published within thirty (30) days before any election specified in this section shall become effective on the day following such election, unless such day is also within thirty (30) days before any election specified in this section in which case such ordinance shall become effective on the day following the last such election. Elections to which this section shall apply are: (1) Primary and general election of state, county and national officers, and (2) primary and general city elections, and (3) primary and general school elections. The provisions of this section shall not apply to any special election.

12-524. Annexation of city or part of city not authorized. Nothing in this act shall be construed to authorize any incorporated city to annex any part or the whole of any other incorporated city.

12-525. Act alternative. This act is alternative to any other statute prescribing method and procedure of annexation by cities. Any city may annex under this statute or any other statute applicable to such city.

12-526. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section. [L. 1967, ch. 98, § 8; July 1.]